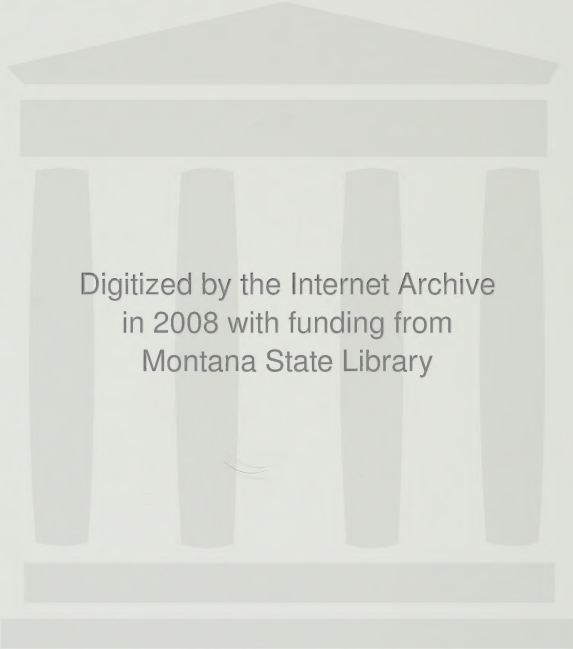


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THE INTERIM

AUGUST 1998

HELENA, MONTANA

VOL. XI NO. 15

LEGISLATIVE AUDIT COMMITTEE

Committee Meets 1 June...The Legislative Audit Committee met June 23 in Room 108 of the State Capitol. The following reports were presented.

PERFORMANCE AUDITS:

Contract Administration, State Compensation Insurance Fund, Department of Administration (98P-04)

This performance audit examined controls related to contract administration at the State Compensation Insurance Fund (State Fund). There are seven departments within State Fund, all of which have at least one contract for outside services. Over the past two years, State Fund contracted for more than 40 types of services. Ten of these 40 types of services were reviewed during the audit. The total cost for these 10 services was \$2,265,732.

The audit findings indicate that controls over contractors appear reasonable overall. Processes are in place for selecting and monitoring vendors. Audit recommendations relate to improving the compliance, efficiency, and effectiveness of the processes already in place. Implementation of the recommendations will improve documentation and compliance, which should enhance State Fund's operation.

Apprenticeship and Training Program, Department of Labor and Industry (98P-06)

The performance audit of the Apprenticeship and Training Program examined the role and responsibilities of this program. This program assists employers and apprenticeship training committees in establishing training programs for apprentice-able trades. Training consists of on-the-job training supplemented with classroom and textbook course work. Currently, 850 employers participate in training 900 apprentices through the Department's program.

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Audit recommendations address the administration and distribution of state grants provided to offset training costs incurred by employers. In addition, the audit identified four areas for Department consideration that could improve training provided to apprentices. Audit work also resulted in identifying two funding-related areas for legislative consideration.

Child Care Certification & Monitoring, Department of Public Health and Human Services Follow-up (97SP-65)

This performance audit report presents the follow-up to the audit of Child Care Certification & Monitoring (95P-03) administered by the Department of Public Health and Human Services. Five of the original nine recommendations have been implemented and three are currently being implemented. One recommendation was not implemented: compiling management information to measure program efficiency and effectiveness.

Foster Care Facility Licensing and Other Related Issues, Department of Public Health and Human Services Follow-up (95SP-61)

This audit report presents the follow-up to the performance audit of Foster Care Facility Licensing (93SP-03) administered by the Department of Public Health and Human Services. Five of the original 10 recommendations were implemented and three are partially implemented. Two recommendations were not implemented: implementing a file review process to ensure that complete documentation exists and periodically evaluating the effectiveness of foster care programs.

ELECTRONIC DATA PROCESSING (EDP) AUDITS

Combined Oil and Gas System (COGS) Application Controls, Department of Revenue (98DP-07)

This EDP audit at the Department of Revenue reviewed input, processing, and output controls over data processed through COGS. In addition, the audit reviewed general controls over electronic access, physical security, and system development. The audit includes recommendations for improving electronic access controls and system documentation and correcting tax return adjustments.

Department of Revenue Application Controls Follow-up (98DP-08)

This report is a follow-up to the Department of Revenue Application Controls audit issued in December 1996. The original audit reviewed computing controls over the Department's Computer Assisted Mass Appraisal, Individual Income Tax, and Delinquent Accounts Receivable systems. This report provides the current status of prior recommendations.

CONTRACT AUDIT

Montana Medical-Legal Panel (98C-01)

Under contract with the Legislative Auditor's Office, Henry Fenton, CPA,

conducted the financial-compliance audit of the Medical Legal Panel for the year ending December 31, 1997. The auditor made no recommendations and gave an unqualified opinion on the financial statements presented.

To Meet in November...The next Legislative Audit Committee Meeting is tentatively scheduled for November 12 in Room 104 of the State Capitol.

LEGISLATIVE SERVICES DIVISION

Report Available...The following report is currently available from the Legislative Services Division. To obtain a copy, please contact the LSD Library at 444-3064 or by e-mail at <efurbush@mt.gov>.

"DIVIDED SOVEREIGNS: A Legal Analysis Surrounding the Creation of County Boundaries on Indian Reservations Within the Territory and State of Montana", Eddy McClure

COMMITTEE ON INDIAN AFFAIRS

To Hold Final Meeting...The Committee on Indian Affairs will hold its final meeting of the interim on Friday, August 28 in Room 104 of the State Capitol, beginning at 9 a.m. The Committee will hear from the Department of Commerce and the Department of Public Health and Human Services regarding economic development and welfare reform on Indian reservations. In addition, the Committee will adopt its legislative proposals for the 1999 session.

For further information about the meeting, please contact Connie Erickson, Legislative Services Division, at (406)444-3064 or by e-mail at <cerickson@mt.gov>.

COMMITTEE ON PUBLIC EMPLOYEE RETIREMENT SYSTEMS

Committee Holds Video Conference...Moving ahead with its preliminary recommendation to establish a Modified Public Employees' Retirement System giving eligible public employees a choice between a Defined Benefit (DB) plan, as PERS is currently structured, or a new Defined Contribution (DC) plan, which is similar to a 401(k), the Committee on Public Employee Retirement Systems (CPERS) met July 9-10 to hear public comment, consider plan administration issues, and further refine plan design changes.

During a two-way video conference July 9 using METNET and EMTN sites in 19 locations around the state, CPERS fielded questions and comments about its preliminary recommendations. Several PERS members disapproved of the recommendation that would give only nonvested and new PERS members a choice between the PERS DB plan or the new DC plan and stated that vested members should also be given a choice of plans. Other comments were aimed at clarifying a proposed change that would give certain PERS DB plan participants the option of allocating a certain percentage of retirement contributions to a special account to help pay for postretirement health insurance and other eligible medical expenses.

Committee Looks at Plan Administration...On July 10, CPERS took actions to further refine its recommendations, and a consulting team from Actuarial Sciences Associates (ASA) presented a report on the governance and administration issues involved in setting up a new DC plan. The key administration issues include whether the current board of trustees for PERS should also act as the board of trustees for the new DC plan; whether trusteeship should be assigned to the Department of Administration, which currently administers the state's 457 deferred compensation plan (also a DC plan); or whether an entirely new board should be created. Another key issue is whether and to what extent administration of the DC plan should be outsourced to private vendors, as is done with the state's 457 plan as well as the University System's Optional Retirement Program. ASA's consultants have recommended that the new DC plan be administered under the current PERS administrative structure but that the selection and membership of the PERS Board be changed and that the 457 plan be moved under the PERS Board.

Committee to Meet Again in August...CPERS has requested reactions and recommendations from the Department of Administration and the PERS Board by its next meeting, which is set for August 5-6. Also, during the August meeting, which will be in Room 104 of the State Capitol beginning at 8 a.m. on both days, CPERS will be conducting a public hearing on other proposals to be introduced during the 1999 legislative session.

For additional information see the CPERS Internet site at <http://www.mt.gov/leg/branch/pers_main.htm> or contact Sheri Heffelfinger at <sheffelfinger@mt.gov> or (406) 444-3064.

INTERIM PROPERTY TAX COMMITTEE

Committee Activities Nearly Complete...With two work sessions and three public hearings remaining, the work of the Interim Property Tax Committee is drawing to a close. The finish line is in sight and the members of the Committee are favoring three primary alternatives:

- a change in the approach to valuation of Class 4 property, from "current market value" to "acquisition value";
- a combination of "cut and cap", rate reduction, and homestead exemption; and
- comprehensive property tax reform, accompanied by a 4% statewide, general retail sales tax.

Acquisition Valuation Option...Some members of the Committee favor a change in the method of valuing Class 4 property from the current market value approach to an acquisition value approach, a la California or Florida. The acquisition value approach most seriously scrutinized by the Committee has the following components:

- the 1993 value established by the Department of Revenue would be the base year value;
- the base year value could increase by the lesser of CPI inflation or 1% annually; and
- property newly constructed after 1993 or converted from non-Class 4 classification to Class 4 after 1993 would be valued at the "acquisition value" of the property at the time the property changed hands or was reclassified as Class 4.

Combination Option...Some members of the Committee favor a combination of changes, including changes to mill levies, the statutory tax rate, and the (amount of) market value of owner-occupied homes subject to property taxation. The combination option has the following components, although the precise changes in any of the components has not been decided:

- reducing the number of mills levied statewide for K-12 education (95 mills) and the Montana university system (6 mills);
- a reduction in the statutory tax rate applicable to Class 4 property from 3.816% (TY 1998 rate) to something less; and
- the partial exemption from property taxation of the market value of an owner-occupied home, e.g., the first \$10,000 or less of market value or 50% of the first \$20,000 or less of market value.

The Committee will consider the combination option further at its work session in Columbus on August 6.

Comprehensive Reform Option...The Committee created a subcommittee (of member volunteers) on property tax reform and sales taxation that met in Billings on July 23. The Subcommittee reviewed past comprehensive reforms, e.g. SB 235 (1993) and SB 258 (1997); discussed the myriad of issues revolving around the tax base, the allocation of revenue, revenue distribution mechanisms, and so forth; and generally agreed on the outlines of a comprehensive reform proposal. The general proposal favored by some Subcommittee members has the following components:

- the elimination of approximately \$400 million in annual property taxes currently collected for and expended on the support of public education. The

reductions would be effected in several ways, including the elimination of statewide mill levies for K-12 education and the university system, higher state support of school transportation and school retirement costs, and the partial exemption of the market value of owner-occupied residences;

- the total exemption from property taxation of property commonly known as "business equipment", resulting in an additional reduction of \pm \$100 million annually in property taxes;
- further restricting the potential for growth in revenue/expenditures for local governments and K-12 schools;
- the enactment of a statewide, general retail sales tax at a rate of 4% with exemptions for food, prescription drugs, and medical services and establishing a broad base of taxable goods and services, including most professional services;
- providing sales tax rebates to low-income individuals and families through a refundable income tax credit; and
- ensuring virtual "revenue neutrality" in state/local taxation.

Some members of the Subcommittee plan on considering changes or refinements to the basic proposal, including:

- providing some (\pm \$100 million) individual income tax relief and less property tax relief (\$400 million rather than \$500 million);
- providing a larger income tax rebate and extending the eligibility for a rebate to all resident income tax payers, but including food in the sales tax base; and
- targeting some additional property tax relief to homeowners.

Issues Remaining... The Committee has considered expanding property tax relief measures targeted at Montana's elderly homeowners and lower-income homeowners. Further attention will be afforded this option on August 6 in Columbus. The Committee will also consider another proposal by Senator Stang, specifically, expanding the local option "resort area" sales tax to other communities by eliminating the resort area requirement and the population thresholds.

Aside from the alternatives considered to date is the innocuous matter of electric and natural gas restructuring and the impact of that action on Montana's property tax base and the services and programs supported by property taxes. The Committee members are waiting anxiously to review the recommendations of the Revenue Oversight Committee in regard to utility restructuring and the impact on property taxation. Anticipating progress on the matter by the ROC, the Committee intends to incorporate the ROC's findings, conclusions, and recommendations into the options included on the "menu of alternatives" being prepared by the Committee.

Other Activities...The full Committee is scheduled to meet in Columbus on August 6 for a work session to finalize existing proposals and to hear any new proposals. There will also be a public hearing in Columbus on the evening of August 6. The Committee will conduct a public hearing in Billings on August 7, providing the residents of southeastern Montana the opportunity to make recommendations for reforming the state's property tax system. Monday, September 14 marks the final meeting (tentative) of the Committee. The Helena venue affords the Committee a final opportunity to review and refine the alternatives and to hear reactions from all "the usual suspects" before concluding its work.

SENATE BILL NO. 195 DECLARED UNCONSTITUTIONAL

Judge Issues Ruling...Because no written decision has yet been issued, details are sketchy, but District Court Judge John Christensen on Tuesday, July 28, declared the "phase-in" provisions of SB 195 unconstitutional saying the law violates the portion of the Montana constitution requiring the state to "equalize the valuation" of all property for the purposes of taxation. The extent of the ruling is unclear at this time, pending a written order which is expected within 30 days (August 27).

Staff of the DOR are also uncertain at this time whether an appeal to the Supreme Court will be pursued, but, if one is filed, the parties are likely to request an expedited review.

Decision Could Have Far-Reaching Implications...Potential implications from the decision span a wide range of possibilities, but speculatively could include:

- a delayed implementation of any decision so as to give the 1999 Legislature an opportunity to address and remedy the decision;
- a Montana Supreme Court hearing/decision that would postpone a final conclusion until the 56th Legislature convenes in January 1999 (or possibly until after the 56th Legislature adjourns);
- the immediate (and perhaps retroactive) implementation of the 1996 revaluation of property in Class 4 (homes/business realty), Class 3 (ag land), and Class 10 (timberland);
- calculating and distributing refunds of property taxes overpaid in 1997 on the basis of "phased-in" values;
- calculating and distributing bills for additional taxes underpaid in 1997 on the basis of "phased-in" values;
- the reduction, temporary cessation, or outright elimination of providing some or many property-tax-supported public services, including schools, public safety, road maintenance, etc;
- the accumulation of excess property tax collections; or
- a special legislative session to address some or all of the possibilities.

For good or ill, local governments are in the final stages of budget development for fiscal year 1999 and are statutorily required to set their final budgets in a matter of weeks. Thus, Judge Christensen's ruling may have an immediate effect on budgets, mill levies, and property tax bills to be distributed to various property tax payers over the next several months.

The effect of the 1996 reappraisal may be somewhat mitigated from published reports because of the restrictions imposed on local governments by I-105 (as amended) and on schools by HB 667 (1993), each of which, respectively, limits/caps the expenditures of local governments and schools. More daunting, perhaps, is the matter of the mills levied statewide for schools and the university system -- 101 mills in total -- that are within the sole jurisdiction of the Legislature.

Committee Considering Options...The Interim Property Tax Committee (IPTC), ironically created by SB 195, has identified three primary and several secondary options intended to be included on the "menu of alternatives" they were commissioned to create. (See companion article on the Interim Property Tax Committee.) Although the IPTC members have thus far perceived their charge as one of "identifying options" rather than "recommending solutions", their August 6 and 7 meetings in Columbus and Billings may take on an additional sense of urgency and responsibility.

Electorate May Have Final Say...Ultimately, the resolution of the property tax conundrum may be up to the electorate. Attempts in the recent past advocated by the Legislature to effect significant reforms (e.g., SB 235 (1993) the property tax reform/sales tax proposal) have been rejected at the polls, as have several citizen initiatives (e.g., CA 27 (1996) the abolition of property taxes). As a result, a prescription that the Legislature and public are both willing to swallow as a treatment for the property tax malady has yet to be concocted, regardless of the source of the proposed cure.

GAMBLING STUDY COMMISSION

Commission Meets in Missoula...The Gambling Study Commission held its penultimate meeting of the interim on July 20 in Missoula. The five-member body heard and discussed progress reports from Dr. Polzin and staff of the Bureau of Business and Economic Research as well as Dr. Rachel Volberg from Gemini Research in Massachusetts. (Volberg participated via teleconference phone line.) The study team distributed sample text and graphics to the Commission members and other interested persons in attendance. The 1,020 household surveys (done by telephone) have been completed. Most of the responses from the survey of about 425 gambling establishments (done by mail) have been received and tabulated. Dr. Volberg explained preliminary findings on the characteristics and prevalence of problem and pathological gambling in Montana based on data collected in the household surveys

and from information obtained from addictive disorders treatment centers and members of Gamblers Anonymous. While nearly all of the results at this juncture were tentative, and all of the written materials on hand were in draft form, the Commissioners got a good sense of what to expect in the final product, which will be a roughly 30-page document (with technical appendices) that must be delivered to the Commission by September 1.

Some Preliminary Findings...The preliminary findings include the following:

- Local governments are, by and large, more reliant than ever on gambling tax revenue. Overall, video gambling taxes that averaged 10 percent of municipal general fund revenues in 1990 grew to almost 14 percent in 1997. (In a few northern counties, there has been decline attributable to the fact that residents of Alberta and other Canadian provinces can now gamble in their own communities.)
- Certain types of crime can be statistically correlated with gambling in Montana, but other types cannot. For example, an increase in gambling will result in higher incidences of robbery, burglary, and vandalism. However, there is no measurable correlation--given the quantity and quality of existing crime data--between gambling and other crimes, including assault, domestic abuse, forgery, fraud, and embezzlement. Other related findings, using comparative data from communities in Montana, Idaho, Utah, and Wyoming, show that crime has not increased more in cities with gambling than in those without.
- The prevalence of problem and pathological gambling has increased from about 2.2 percent of the population as measured in 1992 to 3.6 percent this year. Montana's rate is at the high end of the middle tranche when compared with other states where similar methods of measurement have been used.
- According to the expenditure patterns evidenced by the household survey results, about 37 percent of the money spent on gambling machines in Montana comes from the wallets of people whose scores on a profiling screen (which was embedded in the survey) indicate they are problem gamblers.
- The gambling industry in Montana is variegated, ranging from firms with 10 or fewer (including zero) video machines and who earn less than 15 percent of their revenue from gambling to larger, casino-like businesses with the maximum allowed 20 machines and that earn an average of 62 percent of their revenues from gambling. The average "net margin" (a measure of return on investment) to owners and operators of gambling establishments is about 13 percent.

Again, these results are tentative and subject to change before the contract team's final report is submitted to the Commission in August.

To Meet Again in August...The Commission's next meeting will take place in Room 437 of the State Capitol on Monday, August 17, beginning at 9 a.m. The focus will be first on the substantive results of all the study components and then on the style and method of presenting the material in a reader-friendly fashion. As always, there will be opportunity for public input and comment.

To Hold a Public Hearing...The Commission will sponsor a public hearing on the study results on September 9 in Helena, again in Room 437 of the State Capitol. All legislators and other interested persons will be invited to attend. The study team will present its findings and the Commission will discuss its own conclusions based on the information. Both groups will then be available for questions and comment from legislators and the general public.

For further information, contact Stephen Maly at 444-3064 or <smaly@mt.gov>.

TRANSITION ADVISORY COMMITTEE

TAC Meets in Sidney...The Electric Utility Industry Restructuring Transition Advisory Committee (TAC) met on Friday, July 24, at the Elks Lodge in Sidney, Montana. Members of the public were provided an opportunity early on to make comments and ask questions about the restructuring process. The discussion evidenced diverse concerns about the situation in northeastern Montana, where local cooperatives have so far opted not to open their territories to competition and where Montana-Dakota Utilities is not required, under SB 390, to offer customer choice in electricity supply until 2002. The electrical power needs and interests of predominantly rural agricultural consumers were the main focus of attention.

Public Service Commissioner Bob Anderson could not attend the Sidney meeting in person but attended the first part of the meeting via a conference call connection. Commissioner Anderson brought the other members up-to-date on the status of the required transition plans from both Montana Power Company and PacifiCorp.

TAC Hears About "Unbundling"...A consulting economist from the National Rural Utilities Cooperative Finance Cooperation made a presentation outlining the economic difficulties of "unbundling" metering and billing services from the distribution portion of a utility's service functions. Contrasting information was provided by Alan Davis, a member of the TAC representing the Department of Environmental Quality. Whether or not customers will, under SB 390, be able to exercise choice in who performs certain electricity-related services remains an open issue and will no doubt remain so for awhile longer as the multi-year transition process unfolds.

Subcommittees Continue Work...Dave Wheelihan, executive director of the Montana Electrical Cooperatives Association, provided the Committee with an update on the progress of the Education Subcommittee, which met in Helena on July 1. The Subcommittee plans to serve as a clearinghouse for information about restructuring that is supplied by the utility companies and the electrical coops to their respective customers. Under SB 390, utilities bear responsibility for customer education. A collaborative process last year involving Montana Power and other interested parties and groups produced an agreed-to template for the basic message about restructuring. By engaging itself as a clearinghouse, the Subcommittee will be able to evaluate the fairness and effectiveness of educational campaigns and recommend, if necessary, changes in the style and content or even a change in the law itself if the current arrangement is not working.

Rep. Ernest Bergsagel provided a report on the work of the Universal Systems Benefits Charges Subcommittee, which met July 22-23 in Helena.

TAC Discusses Possible Legislative Proposals...After a working lunch the Committee heard and discussed a staff-generated list of issues and topics that might warrant legislative proposals made by the TAC to the Legislature as a whole. Included on the list were taxes, customer education, and reciprocity (each of which is being addressed separately by subcommittee groups) as well as water rights, consumer protection measures, and the pending, unanticipated sale by PacifiCorp of its distribution and transmission assets in Montana.

To Meet in September...The next TAC meeting is scheduled for September 18 in the State Capitol in Helena. Further information and an agenda (in late August) can be obtained from Committee staff members Todd Everts at 444-3742 or Stephen Maly at 444-3064.

ENVIRONMENTAL QUALITY COUNCIL

Montana Growth Issues...At its June 25th meeting in Dillon, the Growth Study Subcommittee of the Environmental Quality Council (EQC) heard presentations from elected officials, planning board members, and staff from four Montana counties. Presenters discussed planning and zoning efforts within their jurisdiction and highlighted successes and failures. Interesting approaches highlighted by panelists include: an agricultural zoning district in Jefferson County, impact fees assessed by Bozeman and Gallatin County, neighborhood planning in Flathead County, and a geographic information system (GIS) funded partly by landowner donations in Madison County.

The Growth Study Subcommittee's next meeting will be held in Helena on August 7 from 10 a.m. to 3 p.m. in Room 104 of the Capitol. The Subcommittee will discuss other Montana initiatives related to growth, establish priorities for addressing issues that have been raised by panelists, review draft sections of a report on planning

for growth in Montana, and discuss terms used in planning and zoning.

For agendas or further information, contact Mary Vandenbosch or Larry Mitchell by phone at 444-3742 or by e-mail at <mvandenbosch or lamitchell@mt.gov>.

EQC Waste Tire Study...A working group of citizens, assembled to study alternatives for managing scrap tires in Montana in response to SB 332, has met twice and concluded that it is ready to identify problems, potential solutions, and make its recommendations to the EQC. Staff is drafting a report on waste tire management alternatives available to Montana based on efforts in other states and alternatives reviewed by the working group. EQC staff is currently developing a draft list of problems identified by the group, viable options for solutions, and potential recommendations for the group to review and discuss at its next and possibly final meeting which is scheduled for Friday, August 14 from 1 to 4 p.m. in Room 104 of the State Capitol. From this discussion it is anticipated that the study group will be finalizing its recommendations to the EQC. The report and the group's recommendations should be presented for consideration by the EQC at the Council's next meeting scheduled in Helena on September 10th.

Interested persons with suggestions on what alternative solutions should be included or with information regarding current problems resulting from waste tire management in Montana are encouraged to contact Larry Mitchell, EQC staff, at 444-1352 or e-mail to <lamitchell@mt.gov>.

Water Policy Committee...At its June meeting, the EQC continued to pursue its water-related statutory requirements through the review of Montana's Renewable Resource Grant and Loan program. The Council also took a tour of the upper Beaverhead watershed with local resource agency representatives and area business people and citizens. The focus of the tour was viewing waters listed as "impaired" or "threatened" on the states water quality list and discussing implications of the new statutory requirements related to these streams from the passage of HB 546 last session. The Council continued its discussion at a Council dinner where Rep. Karl Ohs presented a slide show on the progress and challenges of Virginia City restoration.

The Water Policy Committee met the morning of June 25th in Dillon. The Committee continued its work on the Council's water-related statutory requirements, provided advice to DNRC on their proposed new chapter of the State Water Plan (focussing on ground water), heard an update related to water right issues in the Gallatin valley, discussed proposed legislation related to the FWP instream flow leasing program, and made decisions regarding its final products for recommendation to the Council for consideration by the Legislature. The Committee decided to meet again on August 4th, in Helena, to continue its work on the HB 546 oversight report and the Council's water policy report and to finalize proposals and rationale for instream flow leasing program recommendations.

For further information about the August meeting, please contact Kathleen Williams (444-3742).

Tour of Hilger Ranches and the Kendall Mine...At the direction of the full Council,

Co-chair Sen. Ken Mesaros and the Water Policy Subcommittee Co-Chairs Rep. Bill Tash and Sen. Bea McCarthy toured the Kendall mine site and neighboring ranch property near Hilger, Montana on Monday, July 28th. The Council members had a first hand look at several ranch properties where landowners were concerned with water shortages and water quality issues. The legislators also took an extensive tour of the Kendall mine, including viewing a waste water pump back system and a water treatment system at the mine. The Council members will report to the full Council in September.

Next EQC Meeting in September...The next EQC meeting will be held on September 10 in Helena. This meeting will focus on compliance and enforcement reporting from the state's natural resource and environmental programs, pursuant to passage of HB132 last session, and on full-Council review of draft Subcommittee products and recommendations.

For more information please contact the EQC staff at 444-3742 or via the Internet at <teverts@mt.gov>.

CORRECTIONAL STANDARDS AND OVERSIGHT COMMITTEE

Jail Standards Subcommittee...The Jail Standards Subcommittee met July 21 and made some refinements to the draft legislation for the jail standards inspection program for detention facilities and holding facilities. The draft legislation is being circulated to the MACo resolutions committee and Board of Crime Control members for additional comments and some remaining policy decisions.

Juvenile Issues Subcommittee...The Juvenile Issues Subcommittee met on July 9 and approved recommending to the full Committee legislation to repeal the Extended Jurisdiction Prosecution Act and to amend Youth Court recordkeeping provisions to allow for the retention of certain electronic records for research and evaluation purposes.

Private Prisons and Programs Subcommittee...The Private Prisons and Programs Subcommittee met on July 27 and heard presentations from contractor Luke Foust who is reviewing Title 46, chapter 18, MCA, and the Board of Pardons and Parole Executive Director, Craig Thomas, on the Board's latest statistics and legislative proposals. The members compiled a list of ideas for potential recommendations to present to the full Committee, including potential legislation for revisions of Title 46, chapter 18, MCA; a review of sentencing laws and policy; an expansion of home arrest; issues relating to drug courts, family courts, and restorative justice; and a method to encourage criminal justice planning and prevention efforts at the local level.

Committee to Meet in August...The next meeting of the full Corrections Standards and Oversight Committee will be August 20 and 21. The Committee will convene at 7 a.m. on August 20 and hopes to adjourn by early afternoon on the 21st. This meeting will include a report on a revised population projection and budget, incorporating FY 98 experience, for the Department of Corrections and its revised proposals that will be presented to the 1999 Legislature and the completion of the bulk of the subcommittee recommendations.

For information on the subcommittees, the next meeting, or about the Committee in general, please contact Susan Byorth Fox at 444-3064 or by e-mail at <sfox@mt.gov>.

POSTSECONDARY EDUCATION POLICY AND BUDGET COMMITTEE

PEPB Meets in July...The Postsecondary Education Policy and Budget Committee (PEPB) met on July 20 in Helena and discussed enrollment trends and cost projections, the college of technology mill levy, the community college merger with the Montana University System (MUS), and some other potential budget issues.

Enrollment Trends and Cost Projections...Sandy Whitney, Legislative Fiscal Division (LFD), presented a report on enrollment trends and cost projections for the 2001 biennium. This report compares MUS FTE projections to actual FTE and LFD estimates for fiscal years 1996 through 2001 and details the differences in potential cost for the 2001 biennium. In fiscal years 1996 through 1998, the MUS projections are substantially higher than actual FTE. LFD projections made in fiscal 1996 were nearly equal to actual FTE in fiscal 1998 and slightly below revised estimates for fiscal 1999. The differences between the MUS and LFD projections for the 2001 biennium are less than in previous years.

The cost of the potential present law adjustment for the 2001 biennium is based on both the projected total resident FTE and the base from which the calculations are made. LFD projections are slightly lower than the MUS projections, and the LFD base is the FTE that could have been supported by the appropriation rather than the MUS budgeted level. Therefore, the LFD present law enrollment adjustment estimate is \$4.5 million, compared to the MUS \$6.4 million projection.

1.5 Mill College of Technology Levy...At the May PEPB meeting, the LFD reported the possibility that the 1.5 mill levy in five counties for the colleges of technology may be unconstitutional because it is not an equal statewide tax for statewide educational benefits. LeRoy Schramm, MUS legal counsel, reported at the July PEPB meeting that the MUS believes the 1.5 mill levy is constitutional on the grounds that colleges of technology serve a local labor market. He emphasized that the levy is more a policy issue than a legal issue.

Community College Merger...As requested by the PEPB, Dr. Dick Crofts, Commissioner of Higher Education, reported on the advantages and disadvantages of a community college merger with the MUS. Increased costs of such a merger, as reported in an LFD memo, would be approximately \$4.7 million for the 2001 biennium, assuming that in-district students paid tuition equal to that currently paid by out-of-district residents and after the tuition offset, the state paid the total difference in operating and debt service costs currently funded by local tax levies and non-levy revenue.

The PEPB moved to appoint a four-member subcommittee to make recommendations to the full PEPB concerning a community college merger and funding structure. The members appointed are Rep. Ray Peck, chair; Reps. Don Holland and Carley Tuss; and student Kris Copenhaver-Landon. If the subcommittee can formulate a proposal or proposals for PEPB consideration, Chairman Toews will call another meeting to consider them, but that meeting has not been scheduled.

Other Potential Budget Issues...Other potential budget issues discussed by the PEPB are:

- the impact of research on the university budgets;
- the current developments and potential needs in distance learning;
- general fund reverted to maintenance accounts as allowed by statute; and
- the direct cost of remedial education in the MUS.

Other Action...In other action, the PEPB approved a committee bill to provide compensation for the student member of the PEPB that is equal to that received by the Board of Regents members. The student is currently paid as if the student were an advisory council member, rather than a member of the PEPB.

COMMITTEE ON STATE MANAGEMENT SYSTEMS

Committee Continues Technology Review...Only one more session in a sweltering meeting room awaits the members of the Committee on State Management Systems (SMS), a Committee that has had a special knack for scheduling meetings during periods of extreme weather events. Committee members have braved icy roads, blizzards, and a sauna in Room 108 to fulfill their obligations as set out in House Bill No. 89, SMS's enabling statute.

The Committee has followed an interesting path this interim. Originally reinstated to continue the work of the 1995-96 interim's State Management Systems Committee, which saw the genesis of the Montana Project to Reengineer the Revenue and Information Management Environment (MT PRRIME), this interim's Committee also became an information technology classroom. The Committee kept close tabs on MT PRRIME, Year 2000 preparation activities, and other agency management system projects, but was also presented at each meeting with information about new technologies or projects underway by the Department of Administration's Information

Services Division (ISD).

Following is a list of the subjects that the Committee addressed during the course of the interim. Some items were simply single presentations and some (like MT PRRIME and Year 2000) involved comprehensive updates at every meeting. At the Committee's last meeting of the interim, on September 1, it will review the issues more thoroughly and perhaps make some recommendations if warranted:

- public safety communications;
- GIS Cadastral Mapping;
- Project META (Department of Revenue);
- MT PRRIME;
- ISD rate adjustment items;
- Electronic Transactions Act;
- Year 2000;
- information technology (IT) staff salary adjustments;
- local government involvement;
- legislator use of computers during session;
- U-System/MT PRRIME;
- Information Technology Advisory Council;
- desktop software;
- Department of Corrections IT projects; and
- IT contracts.

Committee Makes Preliminary Recommendations...At its meeting on July 23, the Committee made two significant preliminary recommendations:

1. To draft a Committee study resolution calling for an interim study of the state's negotiated bidding process, the RFP process, contracts, and contract monitoring and enforcement, with one particular focus being large-scale IT contracts.
2. To produce the Committee's final report as a Web page on the Internet, complete with hypertext links to the different subject areas listed above and other links to appropriate IT sites. Members of the 1999 Legislature would not receive paper copies of this report, but would be notified of its location in cyberspace.

Final Meeting in September...On September 1, the Committee will finalize these recommendations, develop recommendations or comments for many of the subject areas listed above, and give staff any final directions vis a vis the final report.

For more information on the Committee on State Management systems, contact Leanne Kurtz at <lekurtz@mt.gov> or by phone at 444-3064.

OVERSIGHT COMMITTEE ON CHILDREN AND FAMILIES

Committee Schedules Final Meeting...The Joint Oversight Committee on Children and Families (JOCCF) plans to wrap up the 1997-98 interim on August 17, beginning at 8:30 a.m. in Room 108 of the State Capitol. The agenda will include a response by the Department of Public Health and Human Services (DPHHS) to comments made by members of the public at the Committee's last meeting. During this portion of the meeting held on June 22, a number of people presented their ideas and concerns regarding child support enforcement and FAIM, namely the FAIM administrative rules, sanctions, child care, and DPHHS FAIM policies.

Also on the agenda will be a discussion of the Committee's final report draft; a Children's Health Insurance Program (CHIP) update, including new information regarding DPHHS' ongoing discussions with the federal Health Care Financing Administration; a presentation and review of the comments received on the Committee evaluation survey sent to interested persons last month; final review of the Committee's goals and objectives; a discussion of Committee recommendations for study next interim; and miscellaneous housekeeping measures.

If you received one of the JOCCF evaluation surveys and have not yet completed it, please do so at your earliest convenience.

For more information about JOCCF's interim activities or the next meeting's agenda, please contact Leanne Kurtz at <lekurtz@mt.gov> or by phone at 444-3064.

THE BACK PAGE

What Montana summer would be complete without a float trip down one of the many scenic rivers that flow through the state? Whether it's a leisurely jaunt down the Mighty Mo or shooting the Alberton Gorge on the Clark Fork, river float trips are part and parcel of the Montana experience.

This month's "The Back Page" article looks at floating the Smith River, an experience that has become so popular that it is now closely regulated by the Department of Fish, Wildlife, and Parks. But despite the regulation, it is still an experience that many people long for and some people fulfill.

SMITH RIVER ODYSSEY

by Leanne Kurtz, Research Analyst
Legislative Services Division

INTRODUCTION

A slap on the leg leaves in its wake a dozen dead mosquitos, a couple horseflies, and a smear of your own blood, but it doesn't matter. Did you really just pay some guy \$68 dollars to shuttle your car 70 miles on a dirt road? Probably, but money is no object here. For the next four days, your clothes, your food, your bed, and your shelter will be stuffed, rolled, crushed, packed, jammed, unpacked, put together, taken apart, dropped in the dirt, dropped in the water, and munched on by ravenous racoons...but, it's worth it. If you're lucky, the sun will shine. If you're not, it will rain, and may even snow, but that's the chance you take. If you hit it right, the water will be clear and beautiful and will carry you with ease over most of the shallow stretches. If you're too late, you will be wading and dragging your craft over the rock-strewn riverbed through three inches of water, eyes peeled for the telltale dark spots downstream that indicate deeper channels. If you're too early, you'll be at the take-out, 60 miles downstream, in about an hour (give or take a few days), and will spend untold river miles summoning all your boating skills and using muscles you thought had long since been retired negotiating the whirlpools, odd currents, swirling, muddy water, and menacing limestone walls that suck you to them faster than you can react.

Did you really vie with 3,000 other ersatz explorers for the opportunity to work this hard and abuse your body and your gear in this manner? Yes, you did. And you'd go again in a heartbeat. Such is the charm of the Smith River.

THE MAGIC OF THE SMITH

Montana is replete with beautiful rivers, streams, lakes, and remote wild places. But the Smith is unique. Whether it is the deep canyon with limestone walls that seem to touch the sky; the color of the east-facing rock at sunset high above camp; the bald and golden eagles working cliffs barely within sight or lurking in the cottonwoods, poised to snatch up a careless rodent; the deep pools and eddies that practically beg to be fished; the fading prehistoric pictographs telling ancient stories on the walls and in the caves along the river; or maybe it's the combination of all those things that lures thousands of floaters to the banks of the Smith River year after year.

The river's popularity has resulted in its having the distinction as Montana's first (and only) river for which the state Fish, Wildlife & Parks Commission has authority to "regulate and allocate recreational and commercial floating and camping" (23-2-408, MCA), a prerogative granted the Commission by the Legislature during the 1989 Session. A glimpse backward (or upstream, as the case may be) in time at the legacy of the Smith River Valley reveals that well before a trip down the river became one of the state's most coveted recreational pursuits, the area had long been considered exceptional for its hunting, fishing, farming, and ranching opportunities, as well as its strategically-placed walls and caves.

THE VIEW UPSTREAM

"We rose early, embarked with all our baggage on board the canoes and at 10 o'clock set out on our journey." These words might well describe any thousand modern Smith River launches from Camp Baker, the trip's launch site. These words, however, were entered in the journal of Lewis and Clark on July 15, 1805, the day they arrived "at the entrance of a beautiful River [near present-day Uln], which in honor to the Secretary of the Navy, we called Smith's River...As far as we could discern its course, it wound through a charming valley toward the Southeast, in which many herds of buffalo were feeding; till at a distance of 25 miles it entered the Rocky Mountains and was lost to our view." They did not explore the river, but generations of Native Americans had already done so-- hunting, camping, and seeking shelter in the numerous limestone caves that dot the area. Once gold was discovered in the nearby Belt mountains in the early 1860s, miners, settlers, and soldiers inundated the Smith River Valley. The United States Army established and manned Camp Baker in 1869 to serve as a link in the communication line that Colonel Eugene M. Baker was establishing between his post at Fort Ellis near Bozeman, to Fort Shaw on the Sun River west of present-day Great Falls. Baker was preparing for a large-scale military offensive against the Piegan Blackfeet and sent troops from Company G of the Second Cavalry to the site to prepare for the campaign. In January, 1870, Company G vacated Camp Baker to accompany Colonel Baker on what ended up being a disastrous attack (from Baker's perspective) on the Blackfeet. Although the Camp was no longer needed as a communications link, the miners in the Belt mountains and

settlers in the Smith River Valley, fearing a Blackfeet attack and recognizing the economic value of soldiers purchasing their goods, insisted that the post remain a permanent fixture in their midst. It remained active until October, 1880.

During the late 19th century, logging operations in the Belts used the Smith River to transport logs to the Missouri and on to Great Falls, while more and more farmers, ranchers, and settlers arrived in the fertile valley. The Anglo experience of the remote life in the Smith River Valley is rife with tales of harsh winters, floods, fires, drought, and long trips to Great Falls for supplies or doctor visits. Despite the rough conditions common to most areas of the west at the time, many of the valley's settlers profited handsomely from the rich and fertile ground, operating successful ranches and farms -- still the primary occupation among many of the area's current property owners.

RECREATION AND POLITICS

It is doubtful that the early Anglo settlers of the Smith River valley completely overlooked the river's recreational possibilities, but they were far too occupied with survival to spend much time idly floating through the canyons, lazing about in the dark green pools drinking beer, or watching the sunset turn an ordinary limestone cliff into the pinkish-orange centerpiece of an Albert Bierstadt wilderness landscape. It wasn't until the 1950s that recreating on and along the Smith River became a matter of public policy and politics.

In 1954, the Montana Fish and Game Commission recommended that a state-owned school section along the Smith River in Cascade County be set aside for public recreation. That same year, a feature article appeared in the Helena Independent Record detailing a state-sponsored excursion down the river in "two husky rubber boats, one a five-man life raft and the other a big, black navy assault boat, a veteran of somewhere in the South Pacific and built to stand rough water and rough treatment." John Willard, the author, reported that the purpose of the party of five (among them, the State Land Commissioner and the State Engineer) was to "check the river for access sites, places where boats such as ours could be put in by anyone." While numerous roads led to the banks of the river, a smattering of state-owned sections were being eyed for public boating opportunities and establishment of state parks. Complete with vivid descriptions and photos of the cliffs, strings of trout, and deep pools, the article no doubt piqued the interest of the outdoor enthusiasts among the Independent Record's readership. "From a fisherman's standpoint, the Smith is made to order," gushed Willard. "Each long, deep riffle ends in black, still water under a glistening wall of rock. In the riffles are hundreds of whitefish, noisily surface feeding with their tiny, soft mouths eager for a dry fly. In the deep holes are big rainbows, holding themselves against the current and catching what the river brings down for food."

The 1954 reconnaissance report by Willard and his companions, coupled with the

recommendation by the Fish and Game Commission, evolved into the Smith River Park Bill, House Bill No. 295, introduced during the 35th Legislature and passed by the House of Representatives. The bill died in the Senate and a similar proposal failed to pass the 36th Legislature in 1959. Continued interest in the area prompted the State Fish and Game Department to purchase land at Camp Baker in 1968 for a fishing access site and launch site for the Smith River canyon float.

The 1969 Legislature passed House Joint Resolution No. 12 which directed the Governor's Council on Natural Resources and Development to study the feasibility of creating a Smith River State Park. The Council instead recommended that the Smith be designated as a State Recreational Waterway, allowing for state-private land exchanges, and urged that funds be earmarked for acquiring scenic easements.

As increased use in the early 1970s led to increased conflicts between landowners and recreationists, the Fish and Game Department began in earnest to mitigate the problems. Representatives of the Department met with landowners, and the Department published a guide to floating the river that urged boaters to respect private property and also began actively managing the river by maintaining boat camps, installing float gates and signs, leasing property at Eden Bridge for a take-out site, and surveying floaters and landowners. By 1986, the Department had completed the Smith River Study, analyzing recreational use and recommending steps for preserving water quality and quantity. The first Smith River Management Plan appeared in 1988, intended to "identify ways of providing continued public recreational use and enjoyment of the Smith River waterway, consistent with the river's capacity to maintain this use; to seek ways to minimize conflicts between river users and private landowners; and to protect the integrity of the river's water and canyon resources for future generations to enjoy."

Floater-landowner strife was not the only friction seen on the Smith River in the 1980s. Accounts (some rather harrowing) of floater against floater for prime camp spots were occurring with increasing intensity. In 1989, the Legislature passed the Smith River Management Act, granting to the Fish, Wildlife and Parks Commission the authority to regulate recreational use of the Smith River. Since adoption of the Act, the Commission has wielded its authority by instituting policies to help prevent the kinds of conflicts that bumper-to-bumper (or bow-to-bow) boats and unchecked numbers of floaters had presented, while attempting to preserve the unique qualities that make the river so popular.

In 1995, a new Smith River Management Plan was developed with the assistance of several public organizations, private individuals, and landowners. The Fish, Wildlife, and Parks Commission adopted the plan in December 1995, and the policies and rules therein undergo a biennial review concurrent with the state parks fee rule review.

Today, to float the Smith River requires would-be boaters to choose specific launch dates and participate in a lottery for a permit. Lucky permit recipients and their

parties (limited to 15 people per permit) must register at Camp Baker with Fish, Wildlife, and Parks river rangers, pay the \$15 per person fee, attach a permit to the boat, and choose campsites on a first-come, first-served basis. During the river's peak season, floaters often arrive at Camp Baker a day or two early to have the best selection of boat camps from which to choose. The Department has established and maintains 27 boat camps, some on state-owned property and some on leased land. River veterans know the most desirable camp sites and the rangers, who periodically patrol the 60-mile stretch often offer advice along those lines as well. This year, the Department's Region 4 office in Great Falls received 3,086 permit applications (down from over 4,000 last year) and issued 711 permits. Doing the math, if each permit holder brought along the allowed 14 people, 10,665 floaters would bob down the river this season. Fortunately, it is relatively rare for one permit holder to usher his or her limit of campers from Camp Baker to Eden Bridge.

Nobody, especially those of us in the Independent West, likes the idea of a river being regulated. It goes against the grain to not be able to simply decide one day that floating the Smith River sounds like fun, grab the boat, the tent, and the dog and set out for a little solitude among the towering cliffs, soaring eagles, and thick forests. Visions of the alternative, however, are all too real on some of the rivers east of the Mississippi, where boaters actually wait in line for two and three hours with hundreds of their closest friends just for the opportunity to ride a few rapids. It sounds like a bad ride at Disneyland, and anyone who has floated the Smith River will attest that it definitely deserves more than an "E Ticket" designation.

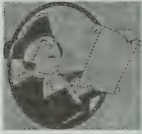
Private property rights, water rights, and recreational use issues on other Montana rivers have triggered similar requests by the Department of Fish, Wildlife, and Parks to have its Commission granted the authority to regulate recreational use. That authority is not without heated controversy, however. Senate Bill No. 149, introduced by Senator Bishop during the 1997 session, would have granted the Commission the authority to regulate certain waterways if requested to do so by the public. The varied interests and livelihoods that are dependent on rivers make this sort of proposal complicated and fraught with inherent conflict, as was apparent when the bill failed to pass. Those concerned with recreational water use range from ranchers, farmers, and landowners to outfitters and the recreating public, all of whom have a legitimate interest in water rights, trespassing, and flow levels.

CONCLUSION

The future of Montana's most popular rivers remains uncertain, but for now, it seems that the management of the Smith River is working. While most of the cabin owners, summer residents, and ranchers probably would rather not have to deal with floaters at all (otherwise, there surely would have been some enterprising property owner selling ice to floaters at mile 40 or so...), they probably would agree that the nine-launch-per-day limit is better than facing a constant stream of people floating

past their carefully-placed picture windows. And floaters are undoubtedly better off, not having to engage in death-match behavior for the best boat camp, or having to worry too much about who has the right-of-way when two or more boats approach a deep fishing hole at the same time. The sheer beauty and diversity of the Smith River almost became its Waterloo (pun intended), but every river is different and even the same river changes from year to year. It appears that the only constants are the diverging uses of rivers and their contents and the concomitant struggle for policy makers.

When you finally push off from the bank at Camp Baker (minus the buildings that marked its former military use), with the horrendous logistics of the trip a distant memory, your gear packed, your shuttle arranged, the sun shining, and the water flowing at about 750 cubic feet per second, words like policy, politics, conflict, management, and legislation are the furthest thing from your mind. It all melts away as you round that first bend, knowing that you have 60 miles of incredible vistas, swirling pools, lush forests, spectacular caves, and the quiet presence of ancient pictographs to experience. The oft-bored soldiers stationed at remote Camp Baker over a century ago would probably have delighted in the throngs of river enthusiasts that populate their little post a couple months every year, but they no doubt would wonder why in the world people go to all that trouble to float down a river, camp out-of-doors, and risk life and limb when there was perfectly good shelter and comfort to be had at home. They wouldn't have understood.



INTERIM CALENDAR

UNLESS OTHERWISE SPECIFIED,
ALL ROOM DESIGNATIONS ARE IN THE CAPITOL

AUGUST

August 4, EQC Water Policy Committee, Room 104, 9 a.m.

August 5-6, Committee on Public Employees' Retirement Systems, Room 104,
8 a.m.

August 6, Interim Property Tax Committee, Little Metra, Columbus

August 7, Interim Property Tax Committee, Lincoln Center Board Room, Billings

August 7, EQC Growth Study Subcommittee, Room 104, 10 a.m.

August 14, EQC Waste Tire Working Group, Room 104, 1 p.m.

August 17, Oversight Committee on Children and Families, Room 108, 8:30 a.m.

August 17, Gambling Study Commission, Room 437, 9 a.m.

August 18, Subcommittee on Veterans' Needs, Room 104, 10 a.m.

August 20-21, Correctional Standards and Oversight Committee, Room 104,
7 a.m.

August 28, Committee on Indian Affairs, Room 104, 9 a.m.

SEPTEMBER

September 1, Oversight Committee on State Management Systems, Room 104,
9 a.m.

September 7, Labor Day, legal holiday

September 9, Gambling Study Commission, Public Hearing, Room 437

September 10, Environmental Quality Council, Room 108

September 11, Legislative Council, Room 104

September 14, Interim Property Tax Committee

September 18, Transition Advisory Committee

September 24, Legislative Finance Committee, Room 104, 1 p.m.

September 25, Legislative Finance Committee, Room 104, 8 a.m.

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